

crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

[59 FR 49161, Sept. 27, 1994; 59 FR 60063, Nov. 22, 1994, as amended at 60 FR 62728, 62729, Dec. 7, 1995]

#### **§ 457.114 Nursery crop insurance provisions.**

The Nursery Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

##### *Nursery Crop Provisions*

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

#### 1. Definitions

(a) *Amount of insurance*—The result of multiplying the highest monthly market value reported on the nursery plant inventory summary (including inventory reported by you and accepted by us on a revised nursery plant inventory summary) by .9, multiplied by the percentage for the coverage level you elect.

(b) *Brownout*—A reduction in electric power that affects the unit.

(c) *Crop year*—The 12 month period beginning October 1 and extending through September 30 of the next calendar year, designated by the year in which it ends. (The 1996 crop year begins October 1, 1995, and ends September 30, 1996).

(d) *Crop year loss deductible*—The value calculated by multiplying the highest monthly market value reported on the nursery plant inventory summary by .9 and subtracting from this product the amount of insurance.

(e) *Field market value A*—Ninety percent (90%) of the wholesale market value for the insured plants in the unit immediately prior to the occurrence of the loss.

(f) *Field market value B*—Ninety percent (90%) of the wholesale market value remaining for the insurable plants in the unit immediately following the occurrence of the loss as determined by our appraisal conducted as soon as reasonably possible after the loss is reported.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

(h) *Largest dimension*—The distance measured at the top of the standard nursery container from one side directly across to the opposite at the widest point.

(i) *Monthly loss deductible*—The smaller of: (1) The highest monthly market value reported on the nursery plant inventory summary multiplied by .9; or (2) field market value A; multiplied by the number derived by subtracting the coverage level percent from one hundred percent (100%), not to exceed the crop year loss deductible.

(j) *Monthly market value*—The dollar amount determined by multiplying the quantity of each insurable plant by its wholesale market value for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for all insurable plants in the unit.

(k) *Nursery*—A business enterprise that produces ornamental plants in standard nursery containers for the wholesale market.

(l) *Nursery eligible plant listing*—A listing contained in the Actuarial Table that specifies the plants eligible for insurance and any mandatory or recommended storage required

for such plants in each hardiness zone defined by the United States Department of Agriculture.

(m) *Nursery plant inventory summary*—A report that specifies the numbers, growing locations, and wholesale prices of plants included in the nursery inventory.

(n) *Standard nursery containers*—Rigid containers not less than three (3) inches across the largest dimension at the top of the container, and which are appropriate in size and with proper drainage holes for the plant contained. Grow bags, trays, cellpacks, and burlap are not standard nursery containers under these crop provisions.

(o) *Stock plants*—Plants used for reproduction, for growing cuttings, for air layering or for propagating.

(p) *Wholesale market value*—The total dollar valuation of the insurable plants actually contained within the unit at any time. The values used will be based on your wholesale price list if properly supported by your records, less the maximum discount (stated in dollar terms) granted to any buyer.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, plant type and premium rate must be contained in the written agreement. Notwithstanding the sales closing date restriction contained herein, in specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the nursery plant inventory, there is a determination that the inventory has the expectancy of meeting the amount of insurance. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved. A written agreement will not be approved for other than standard nursery containers.

#### 2. Unit Division

In lieu of the definition of “unit” contained in section 1 (Definitions) of the Basic Provisions (§457.8), a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

#### 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8) are not applicable to the Nursery Crop Provisions.

#### 4. Contract Changes

The contract change date is June 30 preceding the crop year (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§457.8)).

#### 5. CANCELLATION AND TERMINATION DATES

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are September 30 preceding the crop year.

#### 6. Nursery Plant Inventory Summary

(a) Section 6 (Report of Acreage) of the Basic Provisions (§457.8) is not applicable to the Nursery Crop Provisions.

(b) You must submit a nursery plant inventory summary to us on or before September 30 preceding the crop year.

(c) The nursery plant inventory summary is a projection of the expected inventory for the following 12 months. This summary must include, by unit and by month for each type of plant in the inventory, the:

- (1) Container sizes, as measured at the largest dimension at the top of the container;
- (2) Number of plants;
- (3) Wholesale price for each month of the crop year; and
- (4) Your share.

If your inventory usually changes within a specific month, report the largest inventory that you expect to have for that month.

(d) Your annual nursery plant inventory summary will be used to determine your premium and the amount of insurance for each unit. If you do not submit the summary by the reporting date, we may elect to determine the nursery plant inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of loss adjustment.

(e) Your wholesale price list may be examined to determine whether the prices listed are reasonable. If the prices are determined to be unreasonable, the previous acceptable wholesale price list will be used or we may establish the wholesale price for each type of plant.

(f) With our consent, you may revise your reported nursery plant inventory summary to correct or change the value of the insurable inventory if the amount of the revision is at least ten percent (10%) of the highest

monthly market value reported on the nursery plant inventory summary or \$25,000, whichever is smaller, or if a new plant species is being added that was not originally reported on your nursery plant inventory summary or was approved by written agreement. If you wish to revise the nursery plant inventory summary, you must notify us in writing at least 14 days before a change in inventory value. We must inspect and accept the nursery before insurance attaches on any proposed increase in inventory if:

- (1) The storage facilities have changed in any way since our previous inspection; or
- (2) The revision includes plants that have specific over-wintering storage requirements and that were not previously reported on your nursery plant inventory summary.
- (g) You may not revise your nursery plant inventory summary after the sales closing date to add plants not listed on the Nursery Eligible Plant Listing unless a request for a written agreement to add such plants has been submitted by the sales closing date.
- (h) Insurable plants that are not reported on your nursery plant inventory summary will not be insured, but the value of such plants after a loss will be included as production to count. Such unreported inventory may reduce the amount of any indemnity payable to you.
- (i) You must designate separately any plant inventory that is not insurable.

#### 7. Annual Premium

We will determine your premium as follows:

- (a) The annual premium for each unit will be calculated by:
  - (1) Determining the total value of each plant type and container size designated on your nursery plant inventory summary for each month by multiplying the number of plants by the price for that type and container size shown on your accepted wholesale price list for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for each separate classification shown on the actuarial table;
  - (2) Adding the total values of all plant types and container sizes (determined in (1) above) for each month separately to determine the monthly market values. Then compare the resulting twelve (12) monthly market values to determine the highest monthly market value for the crop year;
  - (3) Taking the total value of each plant type and container size obtained in (1) above for the month having the highest monthly market value for the crop year (determined in (2) above) for each classification specified in the actuarial table and multiplying these values by .9, then multiplying the results by the percentage coverage level you have elected;

- (4) Multiplying each product obtained in (3) above by the appropriate premium rate listed on the actuarial table;

- (5) Adding the products obtained in (4) above; and

- (6) Multiplying the total obtained in (5) above by your share.

- (b) The annual premium will be earned in full when insurance attaches. It is due and payable as follows:

- (1) Forty percent (40%) on the later of September 30 preceding each crop year or the date we accept the inventory for insurance;

- (2) Thirty percent (30%) on January 1 of the crop year; and

- (3) Thirty percent (30%) on April 1 of the crop year.

- (c) Additional premium earned from an increase in the nursery plant inventory summary is due and payable when the revised nursery plant inventory summary is approved by us.

- (d) Premium will not be reduced due to a decrease in the nursery plant inventory summary, unless such decrease results from the deletion of uninsurable inventory from the summary that was erroneously reported as insurable.

#### 8. Insured Plants

In lieu of the provisions of section 8 (Insured Crop) and section 9 (Insurable Acreage) of the Basic Provisions (§457.8), the insured nursery plant inventory will be all nursery plants in the county reported by you or determined by us for which an application is accepted, a premium rate is provided by the actuarial table, and that:

- (a) Are grown under an irrigated practice for which you have adequate facilities and water at the time coverage begins in order to carry out a good irrigation practice;
- (b) Are classified as woody, herbaceous, or foliage landscape plants;
- (c) Do not include plants that produce edible berries, fruits, or nuts;
- (d) Are grown in standard nursery containers;
- (e) Are grown in an appropriate growing medium;
- (f) Are inspected by us and determined to be acceptable;
- (g) Are listed on the Nursery Eligible Plant Listing unless a written agreement provides otherwise;
- (h) Are not stock plants;
- (i) Are grown in accordance with the production practices for which premium rates have been established; and
- (j) Meet the "mandatory" or "recommended" storage requirements, unless you have applied for and received the Frost/Freeze, and Cold Damage Exclusion Option for those nursery plants.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8), coverage begins on each unit or part of a unit the later of October 1 or the date we accept the inventory for insurance, provided you have complied with the terms of paragraph 7.(b)(1). Coverage will not attach for plant inventory added due to a revised nursery plant inventory summary until any additional premium is paid in full. Insurance ends for each unit at the earliest of:

- (a) The date all plant inventory within the unit is sold or otherwise removed unless that inventory is replaced and additional earned premium is paid (If a portion of the plants are sold or otherwise removed from inventory, and are not replaced, insurance only ends on that part of the unit.);
- (b) The date of final adjustment of a loss on the unit when the total indemnities paid for the unit equal the amount of insurance for that unit; or
- (c) September 30 of the crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided for unavoidable damage caused only by the following causes of loss which occur within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, except as specified in (b)(4);
- (3) Insects, but not damage due to insufficient or improper application of pest control measures;
- (4) Plant disease, but not damage due to insufficient or improper application of disease control measures;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption;
- (8) Failure of the irrigation water supply, due to an unavoidable cause of loss occurring within the insurance period; or
- (9) Frost or freeze if there is a failure or breakdown of frost/freeze protection equipment or facilities and the failure or breakdown is directly caused by an insurable cause of loss, provided the insured nursery plants are damaged by freezing temperatures within 72 hours after the failure of such equipment or facilities and you establish that repair or replacement was not possible between the time of failure or breakdown and the time the freezing temperatures occurred.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we do not insure against any loss caused by:

- (1) Brownout;
- (2) Failure of the power supply unless such failure is due to an insurable cause of loss;

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Fire, where weeds and other forms of undergrowth in the vicinity of the building and on your property have not been controlled; or

(5) Collapse or failure of buildings or structures.

11. Duties in the Event of Damage or Loss

In addition to your duties contained under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), you must:

- (a) Obtain our written consent prior to:
  - (1) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or
  - (2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.
- (b) Upon our request, provide complete copies of your nursery plant inventory wholesale price list for the 12 month period immediately preceding the loss and your marketing records including plant shipping invoices for the same period.
- (c) Submit a claim for indemnity to us on our form, not later than 60 days after the earliest of:
  - (1) The date of your loss; or
  - (2) The end of the insurance period.

12. Settlement of Claim

(a) The indemnity will be the amount calculated by us for each unit as follows:

- (1) Subtracting field market value B from the lesser of:
  - (i) Field market value A; or
  - (ii) The highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by .9;
- (2) Subtracting the monthly loss deductible (not to exceed the remaining crop year loss deductible) from the product obtained in (1) above; and
- (3) Multiplying the result by your share.

(b) Individual insured losses occurring on the same unit during the crop year may be accumulated if each loss is reported and valued by us to satisfy the crop year loss deductible. Paragraph 12.(a)(2) will not apply to any subsequent individual loss determinations when the total amount of accumulated monthly loss deductibles is equal to or greater than the crop year loss deductible. Total indemnities for a unit will not exceed the amount of insurance for the unit.

(c) The value of any insured plant inventory may be determined on the basis of our appraisals conducted after the end of the insurance period.

[60 FR 31378, June 15, 1995]

**§ 457.115 Nursery frost, freeze, and cold damage exclusion option.**

This is not a continuous option. Application for this option must be made on or before the sales closing date for each crop year this Option is to be in effect (see exception in item 2 below).

Insured's Name \_\_\_\_\_

Address \_\_\_\_\_

Contract Number \_\_\_\_\_

Identification Number \_\_\_\_\_

SSN/EIN \_\_\_\_\_

Tax I.D. \_\_\_\_\_

Crop Year \_\_\_\_\_

Unit Number \_\_\_\_\_

Hardiness Zone \_\_\_\_\_

For the crop year designated above, the Nursery Crop Provisions (§457.114) are amended in accordance with the following terms and conditions:

1. You must have the Common Crop Insurance Policy Basic Provisions and Nursery Crop Provisions in force.

2. This option must be submitted to us on or before the final date for accepting applications for the crop year in which you wish to insure your nursery plant inventory under this option. If the provisions of paragraph 6.(f)(2) of the Nursery Crop Provisions apply, we may accept this option after the sales closing date, or we may allow additional plants to be added to this option after such date.

3. Executing this option does not reduce the premium rate for nursery crop insurance.

4. All provisions of the Basic Provisions (§457.8) and Nursery Crop Provisions (§457.114) not in conflict with this option are applicable.

5. Upon execution of this option, the following plant varieties will not have frost, freeze, or cold damage coverage on this unit because the mandatory (Risk Group A) or recommended (Risk Group B) over-wintering requirements will not be met.

Scientific name	Common name	Over-wintering requirements to be excluded

Insured's Signature \_\_\_\_\_

Date \_\_\_\_\_

Insurance Company Representative's Signature and Code Number \_\_\_\_\_

Date \_\_\_\_\_

[60 FR 31380, June 15, 1995]

**§ 457.116 Sugarcane crop insurance provisions.**

The Sugarcane Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

*Federal Crop Insurance Corporation**Sugarcane Crop Provisions*

If a conflict exists among the Basic Provisions (§457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

**1. Definitions**

(a) *Crop year*—The period within which the insured sugarcane is normally grown and designated by the calendar year in which the harvest of sugarcane normally begins in the county.

(b) *CFSA*—Consolidated Farm Service Agency (previously the Agricultural Stabilization and Conservation Service).

(c) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(d) *Harvest*—Cutting and removing the mature sugarcane from the field.

(e) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(f) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(g) *Local market price*—The price per pound for raw sugar offered by buyers in the area in which you normally market the sugarcane.

(h) *Plant cane*—The insured crop which grows from seed planted for the crop year.

(i) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(j) *Stubble cane*—The insured crop which grows from the stubble of sugarcane that was harvested the previous crop year.